



EUROPEAN PARLIAMENT

2009 - 2014

Committee on Civil Liberties, Justice and Home Affairs

LIBE Committee Inquiry on Electronic Mass Surveillance of EU Citizens

Final programme

Monday, 14 October 2013, 15.00 – 18.30

Brussels

Meeting room: PHS - P4B001

Introduction

This session will focus on the question of whether the alleged surveillance activities would, if confirmed, be in violation of law, whether at international, Council of Europe, EU or national level. A key question in this regard is the impact on fundamental rights and, in particular the right to data protection and privacy. In order for this question to be answered it is necessary, firstly, to determine, as far as possible, the facts about the surveillance activities in question and, secondly, the law applicable.

At least four different types of alleged surveillance issues would need to be distinguished, namely (i) the NSA mass surveillance of EU citizens / legal entities in terms of electronic or phone communications, (ii) its spying on Member States' embassies and EU institutions, bodies, offices and agencies, (iii) the cooperation of Member States' authorities in the aforementioned programs and/or access to the data produced in result, as well as (iv) the surveillance activities conducted by Member States themselves.

As for the law applicable, besides the US legal framework which has in part been discussed in previous sessions, this session will cover international law, notably UN instruments, the legal framework and case-law produced by the Council of Europe institutions, as well as EU law and relevant national law of the Member States.

The discussion of the applicable law includes as well the discussion as to the division of competences between the national level and the EU level.

On the one side, the Treaty on European Union states that "competences not conferred upon the Union in the Treaties remain with the Member States" (Article 4(1) TEU) and that "national security remains the sole responsibility of each Member State" (Article 4(2) TEU). Also, whereas the Treaty on the Functioning of the European Union clearly confers certain competences on the EU under Title V of Part Three on the Area of Freedom, Security and Justice, certain provisions in this same Title state that this "shall not affect the exercise of the responsibilities incumbent upon Member States with regard to the maintenance of law and order and the safeguarding of internal security" (Article 72 TFEU) as well as that "[i]t shall be open to Member States to organise between themselves and under their responsibility such forms of cooperation and coordination as they deem appropriate between the competent departments of their administrations responsible for safeguarding national security." (Article 73 TFEU)

On the other side, the EU has exercised the competences conferred upon it by the EU Treaties in matters of internal security by deciding on a number of legislative instruments and international agreements aimed at fighting serious crime and terrorism, on setting-up an internal security strategy and agencies working in this field. It needs to be assessed therefore whether or not EU competences in the field of security have been excluded in so far as they relate to matters of national security. If this is the case, the question then arises as to the exact extent of this exclusion. Alternatively, to the extent that EU competences have not been excluded in the field of security, the question arises as to whether certain provisions of the Treaty refer instead to the manner in which those competences will be "exercised" by the EU, and whether there is a distinction to be made between legislative competences and the

execution of operational measures needed to implement EU legislation, as some academics have suggested.¹

Court cases on Surveillance Programmes

A number of court cases have been initiated in different EU Member States (France, Ireland, Luxembourg, Germany, Netherlands and UK), ever since the alleged NSA activities, as well as some national ones, were made public. Representatives have been invited who will present two cases.

First, *La Fédération Internationale des Ligues des Droits de l'Homme* and *La Ligue française pour la défense des droits de l'Homme et du Citoyen* have submitted a complaint against X to the Tribunal de Grand Instance of Paris, for several crimes concerning unauthorised access and use of personal data, following the revelations made by Edward Snowden.

Second, *Big Brother Watch* will present their complaint (lodged together with *English PEN*, *Open Rights Group* and *Dr Constanze Kurz*) before the European Court of Human Rights, which concern alleged violation of Article 8 ECHR by the UK government, due to the latter's involvement in NSA activities as well as its own Tempora programme.

¹ See for example Steve Peers, EU Justice and Home Affairs Law (2011); p. 55

<p style="text-align: center;">SESSION I Electronic Mass Surveillance of EU Citizens and International, Council of Europe and EU Law</p>
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15.00 - 15.10 Introductory remarks by Juan Fernando LÓPEZ AGUILAR, Chair of the LIBE Committee

International law

15.10 - 15.20 Martin SCHEININ, Former UN Special Rapporteur on the promotion and protection of human rights while countering terrorism, Professor European University Institute and leader of the FP7 project "SURVEILLE"

15.20 - 15.55 Questions & Answers

Council of Europe

15.55 - 16.05 Judge Bostjan ZUPANČIČ, Judge at the ECHR (via videoconference)

16.05 - 16.40 Questions & Answers

EU law

16.40 - 16.50 Douwe KORFF, Professor of Law, London Metropolitan University

16.50 - 17.25 Questions & Answers

<p style="text-align: center;">SESSION II Court cases on Surveillance Programmes</p>
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17.25 - 17.35 Dominique GUIBERT, Vice-Président of the "Ligue des Droits de l'Homme" (LDH)

17.35 - 17.45 Nick PICKLES, Director of Big Brother Watch

17.45 - 17.55 Constanze KURZ, Computer Scientist, Project Leader at Forschungszentrum für Kultur und Informatik

17.55 - 18.25 Questions & Answers

18.25 - 18.30 Concluding remarks and follow-up